COURT OF APPEAL FOR ONTARIO

CITATION: The Law Society of Upper Canada v. Chiarelli, 2014 ONCA 391
DATE: 20140514
DOCKET: C56952

Juriansz, Hourigan and Benotto JJ.A.

BETWEEN

The Law Society of Upper Canada

Applicant
(Respondent)

and

Enzo Vincent Chiarelli

Respondent
(Appellant)

Joseph Kary, for the appellant

Simon Bieber and Erin Pleet, for the respondent

Heard: December 10, 2013

On appeal from the order of Justice Robert F. Goldstein of the Superior Court of Justice, dated March 19, 2013, with reasons reported at 2013 ONSC 1428.

Hourigan J.A.:

A. INTRODUCTION

[1] This is an appeal from the order of Justice Goldstein, dated March 19, 2013, permanently enjoining the appellant from engaging in the practice of law or in the provision of legal services in Ontario, or holding himself out as a person who may do so.

[2] For the reasons that follow, I would dismiss the appeal, save for a restriction on the breadth of the injunction order.

B. FACTS

[3] The appellant operates a sole proprietorship called “Landlord Services”. Through that business he provides a wide variety of property management services to property owners for a flat monthly fee.

[4] Included in the services provided are appearances before the Landlord and Tenant Board (the “Board”). The appellant has stated that any prohibition on appearing before the Board would “greatly impact on [his] livelihood.”

[5] In 2007, the *Law Society Act*, R.S.O. 1990, c. L.8 was amended to provide for the regulation of paralegals by the Law Society of Upper Canada (the “Law Society”). Prior to the change in the law, the appellant operated as a paralegal. When the law was amended, he applied to be licensed as a paralegal under the Law Society’s licensing regime. However, the appellant withdrew from the licensing process when faced with the prospect of a good character hearing.

[6] In July of 2011, the Law Society began an investigation of the appellant after receiving two complaints about his provision of unauthorized legal services. The first complaint was that the appellant was advertising legal services. Specifically, the appellant was alleged to have distributed a flyer in which he stated that, for a one-time fee, Landlord Services would provide, "Free Legal Advice and Consultation" and "Representation at the L & T Board."

[7] The second complaint came from a lawyer, who alleged that the appellant was acting on behalf of a landlord before the Board in a matter for which she was acting for the tenants. Tenants' counsel brought a motion in that proceeding to have the appellant removed as the landlord's legal representative. In response to that motion, the appellant took the position that he was a landlord as defined in the *Residential Tenancies Act, 2006*, S.O. 2006, c.17.

[8] The motion was granted by Board Member Carey on September 8, 2011. In her written decision, Member Carey found that the appellant did not fall within the definition of landlord under the *Residential Tenancies Act.* The appellant filed a notice of appeal of Member Carey's decision in the Divisional Court but did not pursue that appeal.

[9] In the course of its investigation, the Law Society determined that the appellant had appeared on multiple occasions before the Board. The appellant took the position with the Law Society that he fit within the definition of "landlord"

under the *Residential Tenancies Act* because he acts as a "personal representative" of the landlord. Therefore, he submitted that he was not required to comply with the licensing regime for paralegals.

[10] At one point the appellant took out observer–like memberships in both the Appraisal Institute of Canada and the Human Resources Professional Association of Ontario in an apparent effort to obtain the benefit of limited licensing exemptions granted to those organizations by the Law Society.

[11] After receiving numerous written submissions from the appellant, the Law Society brought an application seeking a permanent order prohibiting the appellant from providing, or holding himself out as able to provide, legal services.

C. THE DECISION OF THE APPLICATION JUDGE

[12] The Law Society's application for a permanent injunction was granted. In making that order, the application judge concluded that the appellant was providing legal services and that he was not exempt from the licensing requirements found in the *Law Society Act*.

[13] The application judge specifically rejected the appellant's argument that, as a property manager, he is a landlord's "personal representative" and therefore a landlord who is able to self-represent before the Board, holding at para. 15:

> The Respondent's cases certainly support the proposition that the definition of "landlord" can be a broad one. In my view, however, these cases do no

> more than deal with the question of who may exercise the substantive legal rights of a landlord. It would be a real stretch to say that they regulate who may appear in front of a tribunal as a paid representative. That issue has nothing to do with the substantive legal rights of a landlord. These cases do not go that far. The *Residential Tenancies Act* provides very detailed sections as to what a landlord may do, and what a landlord's agent may do. I have no doubt that the Respondent can be the Landlord's agent but I would go no further than that.

[14] The application judge went on to find that, even if the cases cited by the appellant supported his argument, they "have surely been overtaken by the enactment of s. 26.1 of the *Law Society Act*". He concluded that there was no basis to depart from the ordinary meaning ascribed to the term "personal representative" in estates law.

[15] Relying on the test set forth in *R. v. IPSCO Recycling Inc.*, 2003 FC 1518, [2003] F.C.J. No. 1950, at paras. 50-51, the application judge found that a statutory injunction should be granted, concluding at paras. 24 and 26:

> I stated the following in *Law Society of Upper Canada v. Augier*:
>
> > The Law Society has an important role in protecting the public from the activities of unlicensed and unregulated persons. The Respondent, for example, is not required to carry professional liability insurance, keep books and records for inspection by the Law Society, or maintain a trust account for client funds that can be audited by the Law Society. Indeed, the Law Society would have no right or ability to carry out a spot

> audit or any other kind of check in relation to the activities of the Respondent, as it would for a licensed legal professional. That is why the Law Society has a duty to seek remedies against unauthorized persons practicing law or holding themselves out as legal professionals.
>
> …
>
> I find that it is in the public interest to issue an injunction in this case. The Respondent acts as a legal professional without a licence when he appears before the Board as a paid representative. The public interest is best served when properly licensed legal professionals appear before administrative tribunals. I see nothing inequitable about the injunction and therefore no basis to exercise my discretion against granting one.

[16] The application judge also accepted the Law Society's argument regarding abuse of process. He found that that doctrine prevented Board Member Carey's finding that the appellant was not a landlord from being "re-litigated" before him.

D. POSITIONS OF THE PARTIES ON APPEAL

[17] The appellant has abandoned his argument that he qualifies as a landlord because he is a personal representative. His argument on appeal is limited to the assertion that he fits within the definition of a landlord under the *Residential Tenancies Act* because he is a person "who permits occupancy of a rental unit" and/or because he is a person who is "entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent". The appellant

submits that, because he is a landlord, he is entitled to self-represent. He further submits that, to the extent that there is any conflict between his rights under that legislation and the *Law Society Act*, the provisions of the *Residential Tenancies Act* prevail. Finally, he argues that the application judge erred in relying upon the doctrine of abuse of process and in issuing the injunction in a factual vacuum.

[18] The Law Society argues that the provisions of the *Law Society Act* require the appellant to be licensed when providing legal services to a third party and that nothing in the *Residential Tenancies Act* permits the appellant to provide such services. It submits, therefore, that there is no conflict between the two pieces of legislation. With respect to abuse of process, the Law Society's position is that to re-litigate the issue of whether the appellant is a landlord under the *Residential Tenancies Act* is an abuse of process because the issue was determined by Member Carey and the appellant abandoned his appeal of that decision. Finally, the Law Society submits that there was ample evidence on which the application judge could base his decision to issue an injunction.

E. STATUTORY PROVISIONS

[19] The relevant provisions of the *Law Society Act* are as follows:

> **Provision of legal services**
>
> 1.(5) For the purposes of this Act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person.

Same

(6) Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.

2. Selects, drafts, completes or revises, on behalf of a person,

i. a document that affects a person's interests in or rights to or in real or personal property,

ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,

iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,

iv. a document that relates to a matter under the *Bankruptcy and Insolvency Act* (Canada),

v. a document that relates to the custody of or access to children,

vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or

vii. a document for use in a proceeding before an adjudicative body.

3. Represents a person in a proceeding before an adjudicative body.

4. Negotiates the legal interests, rights or responsibilities of a person.

Representation in a proceeding

(7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

2. Conducting an examination for discovery.

3. Engaging in any other conduct necessary to the conduct of the proceeding.

Not practising law or providing legal services

(8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

…

3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.

…

Prohibitions

Non-licensee practising law or providing legal services

26.1(1) Subject to subsection (5), no person, other than a licensee whose licence is not suspended, shall practise law in Ontario or provide legal services in Ontario.

…

26.3(1) On the application of the Society, the Superior Court of Justice may,

> (a) make an order prohibiting a person from contravening section 26.1, if the court is satisfied that the person is contravening or has contravened section 26.1;
>
> (b) make an order prohibiting a person from giving legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws, if the court is satisfied that the person is giving or has given legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws.

[20] The relevant provisions of the *Residential Tenancies Act* are as follows:

> **Interpretation**
>
> 2.(1) In this Act,
>
> "landlord" includes,
>
> (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
>
> (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
>
> (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; ("locateur")
>
> …
>
> **Conflict with other Acts**
>
> (4) If a provision of this Act conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of this Act applies.
>
> …

> **Parties**
>
> 187.(1) The parties to an application are the landlord and any tenants or other persons directly affected by the application.

[21] The *Residential Tenancies Act* is subject to the provisions of the *Statutory Power Procedures Act,* R.S.O. 1990, c. S.22. The relevant provisions of the latter legislation are as follows:

> **Parties**
>
> 5. The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises or, if not so specified, persons entitled by law to be parties to the proceeding.
>
> …
>
> **Right to representation**
>
> 10. A party to a proceeding may be represented by a representative.
>
> **Examination of witnesses**
>
> 10.1 A party to a proceeding may, at an oral or electronic hearing,
>
> (a) call and examine witnesses and present evidence and submissions; and
>
> (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

F. ANALYSIS

[22] A review of the evidence before the application judge clearly supports his finding that the appellant has been providing unlicensed legal services. There

can be no doubt that these services, including participating in a mediation and attending hearings, qualify as the provision of legal services under the *Law Society Act*. Indeed, the thrust of the appellant's submissions both before the application judge and on appeal was not that he was not engaged in the provision of legal services, but that he had a right to do so because he was a landlord and thus had a right to self-represent. Accordingly, there was ample evidence upon which the application judge could base his decision to issue an injunction.

[23] Having made a decision that he would not face a good character hearing, the appellant has raised various arguments and taken various steps to avoid the licensing regime of the Law Society. Those arguments are narrowed considerably on this appeal. The question is whether the provisions of the *Residential Tenancies Act* permit the appellant to self-represent because he is a person "who permits occupancy of a rental unit" and/or because he is a person who is "entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent."

[24] For present purposes, it is not necessary to consider whether the appellant has provided a sufficient evidentiary basis for the application judge or this court to determine whether he fit within the definition of landlord in the proceeding before Member Carey or in any given case. It is also unnecessary to

consider the practical issue of how, in each case, he would prove that he fit within the definition of landlord. I do note, parenthetically, that this new line of inquiry would presumably add a layer of complexity to a landlord and tenant adjudicative process that is designed to be informal and efficient. While these are important issues, I am prepared to accept for the purposes of my analysis that the appellant can establish that he qualifies as a landlord pursuant to the *Residential Tenancies Act*.

[25] The question that remains is whether the appellant as a landlord under the *Residential Tenancies Act* has a right to self-represent. For the following reasons, I conclude that he does not.

[26] First, there is nothing in the *Residential Tenancies Act* that explicitly grants the appellant any right to self-represent. The act is silent on whether a landlord can be self-represented.

[27] Reference to the provisions of the *Statutory Power Procedures Act* is of no assistance to the appellant. That legislation speaks primarily to the rights of a party to a proceeding. The only mention of representation is found in s. 10, which provides that a "party to a proceeding may be represented by a representative." The legislation does not purport to confer any right to self-representation.

[28] The only legislation which explicitly deals with the right to self-representation is the *Law Society Act*. Section 8(3) of that statute permits self-

representation in the limited circumstance where an individual “is acting on his or her own behalf”. That exception is not applicable in the case at bar, because, quite simply, the appellant is not acting on his own behalf; he is acting on behalf of his client.

[29] Although the appellant may be considered a landlord for the purposes of certain aspects of the *Residential Tenancies Act*, this does not change the fact that he is providing legal services to a third party. Any obligations or rights flowing from proceedings before the Board, to the extent that they impact on the appellant at all (e.g. orders under ss. 204 or 205 of the *Residential Tenancies Act* to pay monies or costs to a tenant), are derivative in nature. They flow from the fact that the appellant is providing services to the property owner. If the appellant were not acting for a client in any given case, he would not have any interest in the proceeding and thus no standing.

[30] Statutes are to be interpreted harmoniously. It is presumed that the legislature spoke with one voice and did not intend to contradict itself: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada Inc., 2008), at p. 412.

[31] The interpretation urged upon us by the appellant would unnecessarily import conflict between the two statutes. By contrast, the interpretation tendered by the Law Society does not add any element of conflict between the two

statutes. This interpretation simply requires any right of self-representation to be subject to the provisions of the *Law Society Act*.

[32] Statutes are also to be interpreted purposively. The appellant's interpretation of the *Residential Tenancies Act* would vitiate the purpose of the *Law Society Act* by permitting him to provide legal services free of oversight and regulation. This would amount to a significant exception to the paralegal licensing regime – an exception that is nowhere explicitly stated in any piece of legislation and is premised entirely upon an inference which the appellant invites us to draw. In my view, the inference urged upon us to create this significant licensing exemption cannot be made and ought not to be made on the wording of the statutes referred to above.

[33] Finally, with respect to the breadth of the order made, I note that the application judge granted a broad order which prohibits the appellant from engaging in the practice of law or in the provision of legal services in Ontario, or holding himself out as a person who may do so. In effect, this is a recitation of the prohibition in s. 26.1 of the *Law Society Act*.

[34] It is preferable that a statutory injunction not simply repeat the language of the statute relied upon. This is for the practical reason that such an injunction may be difficult to enforce by way of a contempt proceeding if the terms of the order are not sufficiently specific and clear: Robert J. Sharpe, *Injunctions and*

Specific Performance, loose-leaf (Toronto: Thomson Reuters, 2013), at paras. 3.265, 6.10.

[35] In the case at bar, the order enjoins the appellant from practising or holding himself out as someone engaged in “the practice of law” or the ”provision of legal services” in accordance with section 26(1) of the *Law Society Act.* Section 1(6) of the act provides a very specific definition of the provision of legal services. The order must be read in that context.

[36] Notwithstanding the foregoing, I find that the order is overly broad because the conduct complained of by the Law Society in its application for the injunction was that the appellant has represented and continues to represent parties at the Board. That was the impugned activity argued before the application judge. It is clear that the focus of the application was the appellant’s representation of his clients at the Board.

[37] The provisions of the injunction prohibit conduct which is much wider than the appellant’s appearances before the Board. The injunction is, therefore, overly broad because it goes beyond the *lis* between the parties. Accordingly, I would limit the injunction to an order which prohibits the appellant from appearing before the Board on behalf of his clients or on behalf of himself, save for situations where he is an owner of a property subject to a proceeding before the Board.

[38] Given the foregoing, it is unnecessary to consider whether the determination of the issue of the appellant's status as a landlord amounts to an abuse of process.

G. DISPOSITION

[39] I find that the appellant has no right to self-represent before the Board. The appeal is, therefore, dismissed, save for an amendment to the terms of the injunction to limit the prohibition contained therein to an order prohibiting the appellant from appearing before the Board on behalf of his clients or on behalf of himself, save for situations where he is an owner of a property subject to a proceeding before the Board.

[40] On the issue of costs, I reject the argument made by the appellant that this was a novel issue and that costs should not be awarded. Such a submission could be made on virtually any argument premised on a statutory interpretation. I see no reason to depart from the ordinary rule that the Law Society, as the successful party, is entitled to its costs on a partial indemnity scale. However, because there is some degree of mixed success given the amendment to the wording of the injunction, I would make a slight reduction to the amount of costs that I would otherwise order. I fix those costs at $6,000, inclusive of all disbursements and H.S.T.

"C.W. Hourigan J.A."

"I agree M.L. Benotto J.A."

Juriansz J.A. (Dissenting in part):

A. INTRODUCTION

[41] I have read the reasons of Hourigan J.A. and I agree with him that the application judge was correct in deciding that the Law Society was entitled to an injunction in this case. I also agree with him that the injunction granted is overly broad and must be restricted. However, my reasons for concluding the injunction must be limited are more fundamental and touch on the merits.

[42] Hourigan J.A. concludes that "the appellant has no right to self-represent before the Board" and would reword the injunction to prohibit the appellant from appearing before the Board on behalf of his clients or on behalf of himself, save for situations where he is an owner of a property subject to a proceeding before the Board.

[43] I would conclude that the appellant has the statutory right to appear in person before the Board in cases in which the statute recognizes him as a "party", whether he owns the subject property or not. I see in the statute no language that permits a differentiation between a landlord who is an "owner" and a person who otherwise meets the statute's definition of "landlord" in terms of the right to appear before the Board. I would reword the injunction to permit the appellant to appear before the Board in cases in which the Board finds that he is a "landlord" within the meaning of the *Residential Tenancies Act.*

[44] Since Hourigan J.A. has ably set out the relevant facts, the decision of the application judge, the positions of the parties on appeal, and the relevant statutory provisions, I can proceed directly to explaining where my reasoning differs.

B. THE FORM OF THE INJUNCTION

[45] The prohibitive injunctive powers of the court are extraordinary and must be exercised carefully so as not to not interfere with an individual's liberty any more than required by law. Because this case aptly illustrates the importance of this principle I provide additional reasons for my agreement with Hourigan J.A. that the injunction as granted in this case is overly broad.

[46] The injunction granted in this case prohibits the appellant from engaging in the practice of law or in the provision of legal services in Ontario, or holding himself out as a person who may do so. Justice Hourigan comments that it is "preferable that a statutory injunction not simply repeat the language of the statute relied upon". However, his reason for tailoring the injunction more precisely is that the injunction granted is broader than the conduct that was the subject of the Law Society's application. I agree but would go further. I would adopt the principle stated in Robert J. Sharpe, *Injunctions and Specific Performance*, loose-leaf (Toronto: Thomson Reuters, 2013), at para. 3.265, which Hourigan J.A. cites. In the cited passage the author says:

> Like other injunctions, a statutory order should not be overly broad. It should be framed so as to clearly indicate what conduct is prohibited or commanded and should not just reproduce the general language of the statute.

[47] The practical reason for this is that injunctions are enforced by contempt proceedings. Persons who bring contempt proceedings to enforce injunctions must show that the court order allegedly breached states "clearly and unequivocally what should and should not be done", demonstrate the breach was wilful and establish the contempt beyond a reasonable doubt: *Prescott-Russell Services for Children and Adults v. G. (N.)* (2006), 82 O.R. (3d) 686 (C.A.), at para. 27. See also *Bell ExpressVu Limited Partnership v. Corkery*, 2009 ONCA 85, 94 O.R. (3d) 614, at para. 22. As Sharpe notes, at para. 6.160, when seeking to establish contempt, "[m]uch will depend upon the clarity and specificity of the original order."

[48] If the court fails to set out the specific conduct it intends to prohibit in clear and unambiguous terms, its order may ultimately prove to be unenforceable. Specifically worded injunctions foster the interest of judicial economy by foreclosing disputes about the ambit of the order in subsequent contempt proceedings.

[49] Apart from this practical consideration, the manner in which the court exercises its injunctive powers is important in itself. It should be apparent to the public that the court exercises its extraordinary powers with great care. As well,

persons whose actions are constrained by the power of the court are entitled to know precisely what the court is telling them they can and cannot do.

[50] I would conclude that it is a requirement and not merely a preference that statutory injunctions not simply reproduce general prohibitions in a statute. The injunction granted in this case repeats the general prohibition in s. 26.1 rather than a focused and precise prohibition in the statute. The proper construction of a statute is a complex task, one about which judges disagree (as, for example, in this case). This complex task is not appropriately placed on the person subject to an injunctive order.

[51] It is interesting to note that the scope of the order granted in this case has already been disputed in legal proceedings. See *CEL-30549-13-RV (Re),* 2013 LNONLTB 1393, an Ontario Landlord and Tenant Board proceeding in which a tenant relied on the injunction in arguing that the appellant had committed an abuse of process by completing a notice of termination and application to the Board and by naming himself as landlord. The Board agreed with the tenant, but the Vice Chair reversed the decision on review. She noted that s. 28 (2) of Bylaw 4 of the Law Society of Upper Canada states that for the purpose of the *Law Society Act* the following persons shall be deemed not to be practicing law or providing legal services:

> A person whose profession or occupation is not the provision of legal services or the practice of law, who

> acts in the normal course of carrying on that profession or occupation, excluding representing a person in a proceeding before an adjudicative body.

The Vice Chair observed, at para. 21, that "the completion of the Board's forms is part of the necessary clerical work done by many property management companies."

[52] Board proceeding *CEL-30549-13-RV (Re)* illustrates that the injunction does not clearly and specifically indicate what activities it prohibits. The phrase the "provision of legal services in Ontario" is capable of encompassing a great many activities. In addition to the preparation of documents for use before an adjudicative body, the definition of "legal services" in s. 1(6) 2 of the *Law Society Act* includes giving a person advice with respect to the legal interests, rights or responsibilities of the person or another person, drafting or completing a document that affects a person's interests in or rights to real or personal property, and negotiating the legal interests, rights or responsibilities of a person.

[53] The activities of some property managers in Ontario, such as negotiating leases and working out schedules for the payment of overdue rent, may well touch on some aspects of these provisions. In his reasons, the application judge stated that the injunction was not intended to impair the appellant's ability to make a living as a property manager. He did not, however, specify what the appellant could and could not do.

[54] For these reasons, I agree with Hourigan J.A. that the injunction must be more precisely tailored. However, Hourigan J.A. does not recognize the appellant's right to appear in person in cases in which he is himself a statutory party, excepting when he is the owner of the subject property. I turn to my reasons for disagreeing with this restriction.

C. THE APPELLANT'S RIGHT TO APPEAR IN PERSON

[55] I begin by reiterating that I agree that the appellant should be enjoined from appearing before the Board in any case to represent any other party and from holding himself out as a person who may do so, as the record indicates he has done in the past.

[56] However, there is a subset of cases in which the appellant, like other property managers, is entitled to possession of the property, permits occupancy and collects rent. In some of these cases, the property manager is indicated as the "lessor" on the lease and the tenant deals only with the property manager and has no idea who the legal owner of the premises is. In such cases, the property manager is a "landlord" in the proceeding. The following discussion applies only to such cases.

[57] In those cases in which the Board has found that the appellant meets the statutory definition of "landlord", I would conclude that the appellant has all the

rights and obligations of a "landlord" under the statute, including the right to appear in person before the Board.

(1) The statutory definition

[58] For convenience, I set out the statutory definition of "landlord" again:

> "landlord" includes,
>
> (a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
>
> (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
>
> (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent.

[59] Clearly a person, not being the owner of the premises, who permits occupancy of a rental unit, collects rent and attempts to enforce the rights of the owner does so on the basis of authority derived from the owner. Without doubt, however, the statutory definition includes a person who exercises such derivative authority within its definition of "landlord". For example, para. (a) refers to the "owner…or any other person".

[60] Wording substantially similar to that of the current definition has been in place since 1868: *An Act respecting Overholding Tenants*, S.O. 1868, c. 26, s.

13; *Re Mitchell and Fraser* (1917), 40 O.L.R. 389 (A.D.) at p. 392, per Middleton J. It seems this expansive definition was first adopted to protect tenants. Tenants who dealt only with property managers and did not even know the identity of the owner of the premises could not initiate applications against the owner. It has also been suggested that the expansive definition serves the purpose of providing an informal and efficient procedure for determining disputes between landlords and tenants; this purpose "is facilitated by permitting such individuals as property managers to assume the role and status of landlords for the purpose of invoking the procedures and remedies of the [landlord and tenant legislation]": *Lachance v. Auzano Asset Management Inc.*, 1999 SKQB 1, 184 Sask. R. 107, at para. 16; see also *Delcozzo v. Prompton Real Estate Services Corp.*, [2004] O.R.H.T.D. No. 4, at para. 3. Certainly the legislature intended that the process before the Landlord and Tenant Board should be more informal and efficient than the former regime in which landlord and tenant matters were dealt with by the Superior Court of Justice.

[61] The term "landlord" has its defined meaning throughout the *Residential Tenancies Act*. Section 2(1) provides that the definition applies "In this Act". The appellant is a "landlord" for the purposes of other provisions of the *Residential Tenancies Act*.

(2) The appellant is a statutory party in proceedings before the Board

[62] The provisions of the *Residential Tenancies Act* link together in a chain that leads to the conclusion the appellant is a statutory party in proceedings before the Landlord and Tenant Board with all the rights and liabilities of a party.

[63] Section 187 of the *Residential Tenancies Act* provides that the "landlord" is a party to the application before the Board. Therefore, in those cases in which the appellant is a "landlord" under the statutory definition, he is a party to the application before the Board.

[64] Section 184(1) provides that the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 "applies with respect to all proceedings before the Board." The few exceptions are not pertinent here. Section 5 of the *SPPA* provides that "The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises". Section 10.1 of the *SPPA* provides that a "party to a proceeding" at an oral hearing may "call and examine witnesses and present evidence and submissions" and "conduct cross-examinations of witnesses at the hearing".

[65] In the face of these provisions, I do not find persuasive the reasoning of Hourigan J.A. that "the legislation does not purport to confer any right to self-represent." I do not view a litigant without legal representation as representing himself or herself, but rather as appearing "in person". As I see it, the *Residential*

Tenancies Act makes a person who meets the statutory definition of "landlord" a "party" to proceedings before the Board and grants that person the statutory right to call and examine witnesses, present evidence, make submissions and conduct cross-examinations of witnesses.

[66] The wording of s. 187 of the *Residential Tenancies Act* is worth noting: "The parties to an application are the landlord and any tenants or other persons directly affected by the application." The recognition of a landlord as a "party" is statutory. In cases where the appellant is a landlord, he need not demonstrate that he is "directly affected by the application". That said, the appellant does have an interest in the proceeding because, as a "party", he faces personal liability to satisfy any Board order made against him in his capacity as "landlord".

(3) The appellant, as a party, faces personal liability

[67] I disagree with Hourigan J.A.'s reasoning that the appellant as a party in proceedings before the Board would not be acting on his own behalf. A person who is not the owner but who meets the expansive statutory definition of "landlord" will be personally liable to satisfy any order made against him or her as "landlord". Under ss. 204 and 205 of the *Residential Tenancies Act*, the Board may order the "landlord" to pay to the tenant "any sum of money that is owed", and may order costs against a "party" to the proceeding. Monetary orders could

include, for example, rent abatement and damages. These provisions permit the Board to include in an order "whatever conditions it considers fair in the circumstances". Section 184(1) of the *Residential Tenancies Act* and s. 19 of the *Statutory Powers Procedure Act*, read together, provide that a Board order may be enforced as an order of the Superior Court of Justice. Any order against a property manager as "landlord" must necessarily be enforced against the person to whom it is directed.

[68] Perusal of the case law shows that it is not unusual for the Board to make an order against a "landlord" who is a property manager. In cases where the property manager is the only "landlord" named in the proceeding, the order can be enforced only against the property manager and not the unknown owner who is not a party to the proceeding. In cases where both the owner and the property manager are named as "landlords", it seems to be a common practice of the Board to make orders against both: see *e.g.*, *TST-10899-10 (Re)*, 2011 LNONLTB 830, 2011 CanLII 34682; and *TST-20332-11 (Re)*, 2012 LNONLTB 339, 2012 CanLII 21616.

[69] Of course, the property manager can be expected to pass on the liability for complying with any Board order to the owner. That depends on the business relationship between the property manager and the owner. The risk of the business relationship failing, for example, by the owner's insolvency,

dissatisfaction with the property manager's services or simple refusal to pay, falls on the property manager and not the tenant.

(4) Courts must apply the clear statutory definition

[70] In his analysis at para. 25, the application judge stated his view that protecting the public from the unauthorized practice of law was "the most important factor for a court to consider". I would approach the matter differently. In my view, the most important principle is that the courts apply the enactments of the legislature. This begins by recognizing that the legislature in a statutory definition "can deem 'red' to mean blue, or 'land' to include sky and ocean": Ruth Sullivan, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p. 68. In her most recent edition, *Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008), at pp. 61-62, Prof. Sullivan puts it this way:

> When a word is defined by statute, the binding character of the stipulated meaning depends not on shared linguistic convention among lawyers and judges, but on legislative sovereignty. The legislature dictates that for the purpose of interpreting certain legislation the defined term is to be given the stipulated meaning. This meaning may closely resemble the conventional meaning of the defined term (whether ordinary or technical) or it may effect a significant departure (although too much of a departure would violate current drafting standards). In either case, interpreters are bound to apply the meaning stipulated by the law-maker, which may or may not incorporate conventional meaning.

[71] Courts can decline to apply a statutory definition in the exceptional case in which a contrary legislative intention appears, or the context demands a different meaning: *Legislation Act, 2006*, S.O. 2006, c. 21, Schedule F, ss. 46, 47 and 50. I have scrutinized the entire *Residential Tenancies Act* with these exceptions in mind, and see no reason to diverge from the defined meaning of "landlord". I begin with a consideration of the purpose of the *Residential Tenancies Act*. While Hourigan J.A. recognizes that interpretation must be purposive, he focuses on the *Law Society Act* and does not discuss the purpose of the *Residential Tenancies Act*.

(5) The purpose of the *Residential Tenancies Act*

[72] This court has held that "The purpose of [the *Residential Tenancies Act*] is to provide protections to tenants", especially from unfair rental increases and arbitrary evictions: *Matthews v. Algoma Timberlakes Corp.*, 2010 ONCA 468, 102 O.R. (3d) 590, at para. 32. This court has also stated that any ambiguity should be resolved in favor of the tenant protection objects of the Act: *Price v. Turnbull's Grove Inc.*, 2007 ONCA 408, 85 O.R. (3d) 641, at para. 44.

[73] As I see it, the expansive statutory definition of "landlord" furthers the *Residential Tenancies Act*'s purpose of protecting tenants. The expansive definition protects tenants by enhancing their ability to obtain and enforce Board orders. It provides tenants with someone against whom they can initiate

applications when they do not know who the legal owner is. It also provides them with a person against whom they can enforce Board orders when they do not know who the legal owner is. In cases where both the property manager and the legal owner are named as parties, the expansive definition provides tenants with an increased range of enforcement options.

[74] Another purpose of the *Residential Tenancies Act* is to provide a simplified and fair framework for the resolution of landlord-tenant disputes. The expansive definition of landlord serves this purpose by ensuring that the person most familiar with and responsible for the tenancy can be made a party to the proceeding and subject to the Board's authority.

[75] The application judge points out that the *Residential Tenancies Act* is replete with references to the landlord's "agent". I see no significance in this. The references to "agent" are necessary as a "landlord", whether owner or property manager, may contract others to maintain and otherwise deal with the premises and tenants. The legislature also uses the term "owner" in some places in the *Residential Tenancies Act* where it wishes to distinguish from the broader term "landlord." The Legislature could have used the word "owner" in ss. 187, 204 and 205, discussed above, but instead used the terms "landlord" and "party", which by definition includes "landlord".

[76] On reading the *Residential Tenancies Act* as a whole, I see nothing that suggests that the ordinary and grammatical sense of the definition of "landlord" should not apply. Considering the *Residential Tenancies Act* alone, I consider the conclusion is inescapable: in those cases in which the appellant meets the statutory definition of "landlord", he is a party to the proceedings for all purposes. As a party, he has the statutory right to appear before the Board in person. Any contrary legislative intent must have its roots in the *Law Society Act*.

(6) The *Law Society Act*

[77] I agree with Hourigan J.A. that when interpreting statutes one should strive to avoid disharmony between different enactments of the legislature. I see no disharmony between the *Law Society Act* and my reading of the *Residential Tenancies Act*.

[78] Section 1(8)3 of the *Law Society Act* includes among the persons who were deemed not to be practicing law or providing legal services "An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise."

[79] There is no disharmony between the ordinary grammatical meaning of this provision and the ordinary grammatical meaning of provisions of the *Residential Tenancies Act* that make the appellant a "party" and give him the right to call and

examine witnesses, present evidence, make submissions and conduct cross-examinations of witnesses before the Board.

[80] Interpreting s. 1(8)3 of the *Law Society Act* so that it does not apply to the appellant when he appears as a statutory party before the Board results in disharmony between the *Residential Tenancies Act*, which makes the appellant a party to proceedings before the Board, and the *Law Society Act*, which would prohibit the appellant from fully exercising the rights of a party in those proceedings.

[81] If there were a conflict, the legislature has turned its mind to how disharmony between these statutes should be resolved. The clear legislative intent is that the public interests fostered by the *Residential Tenancies Act* should prevail over the public interests fostered by the *Law Society Act*.

[82] Section 3(4) of the *Residential Tenancies Act* provides that "[i]f a provision of this Act conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of this Act applies." The legislature did not include the same general primacy provision in the *Law Society Act*. If there is any disharmony between the two statutes, the legislature has decided that the overriding public interest lies in preserving the scheme of the *Residential Tenancies Act*.

[83] I would conclude that in cases in which the Board finds the appellant meets the statutory definition of “landlord”, he is a party to the proceedings for all purposes and has the right to appear in those proceedings in person.

D. CONCLUSION

[84] I would allow the appeal in part and modify the order granted. I would order that the appellant is permanently enjoined from appearing before the Board in any case to represent any other party and from holding himself out as a person who may do so. He may appear before the Board in person in cases in which the Board finds that he is a “landlord” within the meaning of s. 2(1) of the *Residential Tenancies Act.*

Released: May 14, 2014

(C.W.H) “R.G. Juriansz J.A.”